IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

CRL.A.No. 1094 of 2004(B)

SC.115/1999 OF ADDL. SESSIONS COURT (ADHOC), TRIVANDRUM,
CP.1/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II,NEYYATTINKARA
.....

APPELLANT:

KUTTA CHANDRAN,
@ JAYACHANDRAN,
S/O.NESAN, C.NO.8268,
C.P.TRIVANDRUM 12.

BY ADV. SMT.ASHA CHERIAN(STATE BRIEF).

RESPONDENT:

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. NOBLE MATHEW.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 09/08/2007,ALONG WITH CRL.A NOS. 1988/2004 & 1464/2004,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

Crl.Appeal Nos.1094, 1464
& 1988 OF 2004

Dated 9th August, 2007

JUDGMENT

Koshy,J.

These three appeals are filed by the accused in S.C.No.115 of 1999 on the file of the Additional Sessions Judge Fast Track Court-I, Thiruvananthapuram. Crl.A.No.1094 of 2004 was filed by the first accused. Crl.A.No.1464 of 2004 was filed by the second accused and Crl.A.No.1988 of 2004 was filed by the third accused. All the accused were convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/= each for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code. They have alleged to have committed the murder of one Rajamony. The deceased Rajamony was conducting a flower mart in the PPM junction in Parassala Village. According to the prosecution, A1 ridiculed PW2, daughter of the deceased (sister of PW1). The deceased Rajamony on coming to know about the same warned A1 about his illegal act. Thereafter, on 12.4.1998, A1 came with A2 and A3 with a common intention to take revenge by causing death of Rajamony. When Rajamony reached in the footpath in the PPM junction near his flower mart for chewing betelnut , A1 to A3 detained him. A1 beat the deceased Rajamony thrice on his

head with a dangerous iron rod, thereby he fell down. Then, A2 beat him with a cricket stump on his right thigh and right ankle joint thrice and A3 beat him with a dangerous stick on his left knee, below left knee and left ankle joint 4-5 times incessantly and then A1 by asking whether he has not died stabbed him with a dangerous knife (MO2) above his right ankle joint and below left knee. The deceased Rajamony was taken by PW1 and others to the Medical College Hospital, Thiruvananthapuram and he was declared dead by the doctor.

2. PW1 is an occurrence witness. He is the son of the deceased Rajamony and brother of PW2. He was sitting in the flower mart and saw the entire incident. He gave evidence in accordance with the prosecution story. He also described the various injuries inflicted by the three accused. By the time he along with others rushed there, the accused ran away and immediately his father was taken to the hospital. Even though various questions were put to PW1, he sustained the cross examination and nothing came out from his cross examination. He proved the prosecution case in toto. It cannot be stated that because PW1 is the son of the deceased his evidence should be discarded. Normally, a son will not accuse innocent people so as to give way for the escape of real culprit. As

held by the Apex Court in **Dalip Singh** v. **The State of Punjab** (AIR 1953 SC 364) “ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person.” PW1 is a natural witness. The incident happened near the flower mart conducted by the deceased and PW1 was also helping his father in the flower mart. When the deceased went for chewing betelnut, the incident happened. PW1 was sitting in the flower mart at that time and he saw the incident. In fact, he along with others immediately took the deceased to the hospital.

3. PW3 is the person who was standing in front of the flower mart and PW4 is the person who went there to take tea in the nearby tea shop conducted by PW5. PWs 3 and 4, independent witnesses, also deposed in terms of the story of prosecution. PW2 Bindu, daughter of the deceased, proved the motive. She stated regarding abuse by A1 and when she reported the matter to the father, father came angry and questioned A1. Thus, motive is proved. PW5 deposed that A1 and A2 came to the tea shop and A1 took a fire wood. That was taken away by PW5. A2 then took away cricket stump (MO4). The allegations were proved in this case. MO1 iron rod and MO2 knife were recovered on the basis of the disclosure statement made by A1. Ext.P7 is the seizure mahazar. Confession

statement of A1 was marked as Ext.P7(a). Similarly, MO4 cricket stump identified as taken from PW5 was recovered on the basis of the disclosure statement made by A2. Ext.P8 is the seizure mahazar and Ext.P8(a) is the relevant portion of the confession statement made by A2. MO3 stick was recovered from the house of A3, as per Ext.P6 seizure mahazar, in the search made by the Investigating Officer.

4. Now, we will come to the postmortem certificate (Ext.P13) proved by PW15. Following are the injuries noted therein:

> "1. Lacerated wound, 5x0.5 cm, bone deep, oblique, on the right side of front of head, the front inner end being 8 cm above root of nose in the midline.
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> 2. Lacerated wound, 9x1 cm. bone deep, sagittally placed, on the right side of head, the front end being, 10cm above top of ear.
>
> 3. Lacerated wound, 3.5x2 cm, bone deep, on right side of back of head, 2 cm outer to occipital protuberance.
> On dissection scalp around injury Nos.1,2 and 3 showed contusion over an area 17x10 cm. Comminuted fracture over an area 23x15 cm involving right side of frontal, right parietal and right temporal bones. Diffuse subdural and subarachnoid bleeding on both sides of brain. Gyri of brain flattened and sulci narrowed.
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> 4. Contused abrasion, 4x3 cm on left side of face, just outer to the eye.

5. Contusion, 3x2x0.5 cm on the outer aspect of right elbow.
6. Contusion, 7x3x0.5 cm, on the inner aspect of right forearm, 7 cm above wrist.

7. Incised wound, 1.5x0.5x0.5 cm, on the front of right middle finger, 2 cm above its tip.

8. Incised wound, 2x0.5x0.5 cm, on the front of right ring finger, 1 cm above its tip.

9. Incised wound, 3x0.5x0.5 cm, in the space between right little and ring fingers.

10. Incised wound, 2x1x1 cm, vertical, on the front of right leg, 22 cm below knee.

11. Abrasion 5x3 cm on the front of right knee and leg.
12. Lacerated wound 3.5x3cm, bone deep, on the outer aspect of right leg 28 cm below knee. Both bones of right leg underneath showed fracture separation.

13. Lacerated wound, 3x2x0.5 cm, on the outer aspect of right leg, 2 cm below injury No.12.

14. Lacerated wound, 3.5x1.5x0.5 cm on the inner aspect of right ankle.

15. Lacerated wound, 4 x 2.5 cm, bone deep, on the front of left leg, 26 cm below knee. Both bones underneath showed fracture separation.

16. Lacerated wound, 2.5x2x0.5 cm, on the front of left leg, 2 cm above injury No.15.

17. Incised wound 2.5x0.5x0.5 cm vertical on the front of left leg, 14 cm below knee."

In the postmortem certificate it is stated that the death was due to

the injuries sustained to the head and legs (Injury Nos.1,2,3,12 and 15). The doctor deposed that those injuries could be caused by a weapon like MO1 iron rod. Similarly injury Nos.7 to 10 and 17 could be caused with a weapon like MO2 knife. Eye witnesses have stated that the above injuries were caused by A1 using MOs 1 and 2. The doctor also deposed that injury Nos.11,13,14 & 16 could be caused by beating with a weapon like MO3. According to the witnesses, the above cricket stump was used by A2 and that was the cricket stump taken away from the shop of PW5 as identified by him. All the eye witnesses stated that A3 has used MO3 stick and that stick was recovered in the search conducted in the house of A3. Injury Nos.4, 5 & 6 could be caused by beating with a weapon like MO4 cricket stump. Except total denial, no specific defence was taken by A1 to A3 in the statement under Section 313 Cr.P.C.. It is true that MOs1 to 4 were not sent for chemical examination. But, here the evidence is clear and cogent and there are eye witnesses to the incident. It has been held by the Supreme Court that mere defects or irregularity or even illegality in the investigation is not a ground for acquitting a person if there are clear and cogent evidence against the accused. (See **Bikau Pandey and others** v. **State of Biha**r (AIR 2004 SC 997) and **State of Rajasthan** v. **Kishore** (AIR 1996 SC 3035)).

5. Main question to be decided is the nature of offence committed by each of the accused. All the fatal injuries were caused by A1. The motive was also attributed to A1. Even though PW1 stated that A1 to A3 were rowdies in the area, A2 and A3 did not inflict fatal injuries. Of course, they have beaten with cricket stump and stick. The cricket stump was taken from the nearby shop. From where MO3 stick was taken is not stated. Anyway, they were not carrying the weapons when they came to the place of incident. A3 took the stick while A1 attacked the deceased. Then A2 and A3 also inflicted injuries with those dangerous weapons. There is no evidence to show that A2 and A3 were aware that A1 was carrying a knife (MO2) with him. As per the evidence, after the deceased Rajamony fell down with the serious injuries on the head which were inflicted by A1, he took the knife from his hip and stabbed the deceased. There is no evidence to show that A2 and A3 shared the common intention with A1 to kill him. But, at the same time, there is a clear case that they shared the intention to cause grievous injuries on the deceased. In the above circumstances, we confirm the conviction and sentence of A1. A1 has inflicted the fatal injuries with the intention to cause his death and there is no reason for interfering with the conviction and sentence passed on A1. With respect to A2 and A3, it cannot be stated that they shared the common intention to kill the deceased,

but, they shared the common intention to cause grievous injuries with dangerous weapons. Hence, they are liable to be convicted under Section 326 read with Section 34 of the Indian Penal Code. So, their conviction and sentence passed under Section 302 read with Section 34 of the Indian Penal Code are set aside and they are convicted for offence punishable under Section 326 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for four years each and pay a fine of Rs.5,000/= each. In default of payment of fine, they shall undergo further imprisonment for three months each. They are entitled to the right of set off.

Crl.A.No.1094 of 2004 filed by A1 is dismissed and Crl.A.Nos.1988 and 1464 of 2004 filed by A2 and A3 are allowed to the above extent.

J.B.KOSHY
JUDGE

V.GIRI
JUDGE

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